

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARRY JOSEPH ABIDIN,

Defendant-Appellant.

UNPUBLISHED

October 21, 2003

No. 242169

Oakland Circuit Court

LC No. 00-174335-FH

Before: Gage, P.J., and White and Cooper, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial convictions of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 1-1/2 to 8 years' imprisonment for the marijuana conviction, and a consecutive two-year term for the felony-firearm conviction. We affirm.

Defendant's sole claim on appeal is that the prosecution presented insufficient evidence to persuade a rational fact-finder that defendant was in possession of a firearm during the commission of a felony. Specifically, defendant claims that mere evidence that police found firearms in his home at the time of his arrest is insufficient to convict him of felony-firearm. We conclude that the evidence was sufficient to support the conviction.

"In reviewing whether there was sufficient evidence to support a conviction, . . . [this Court] view[s] the evidence in a light most favorable to the prosecution to decide whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Knowles*, 256 Mich App 53, 58; 662 NW2d 824 (2003), citing *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

In order to support a felony-firearm conviction, the prosecution must prove that (1) defendant was in possession of a firearm (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of the firearm may be actual or constructive and can be proven by circumstantial evidence. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). Constructive possession may be established if the firearm is known to the person and is reasonably accessible to him at the time of the commission of the felony. *Id.* at 438. "A drug possession offense can

take place over an extended period, during which an offender is variously in proximity to the firearm and at a distance from it.” *Id.* at 439.

The evidence presented was sufficient to show that defendant had constructive possession of a firearm during the commission of a felony. Defendant admitted to selling marijuana since 1996. Marijuana was found on defendant and scattered throughout his house. A loaded shotgun was found in defendant’s bedroom, wedged between his bed and the wall. Defendant was found in a bathroom/bedroom closet that was only accessible by walking through defendant’s bedroom. Defendant was also found with marijuana on his person that was packaged for sale. Ammunition for the shotgun was located in defendant’s dresser drawer. Defendant admitted to keeping the weapon for protection and for hunting. Defendant also stated that he normally kept the weapon loaded and admitted that he knew he should not have the weapon because he was a convicted felon. Thus, defendant was discovered, with marijuana on him, in close proximity to the shotgun; a reasonable jury could conclude, based on the evidence, that defendant knew of the shotgun and had access to it during the commission of the offense.

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper